Supreme Court, U.S.
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No. 94-1020

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

BUD McLAUGHLIN,

Petitioner,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

WHETHER THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS IS CONSISTENT WITH CONSTITUTIONAL STANDARDS FOR ASSESSING THE SUFFICIENCY OF EVIDENCE.

II.

WHETHER SPECIAL AND IMPORTANT REASONS FOR A WRIT OF CERTIORARI EXIST.

LIST OF PARTIES

1. Bud McLaughlin
2. State Farm Mutual Automobile Insurance Company

Subsidiary Companies

A. State Farm County Mutual Insurance Company of Texas
B. State Farm Fire and Casualty Company
C. State Farm General Insurance Company
D. State Farm Health Insurance Company
E. State Farm Life Insurance Company

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SUMMARY OF THE ARGUMENT

The Seventh Circuit Court of Appeals in this case reviewed the trial evidence, allowed every reasonable inference for Bud McLaughlin (the "Insured"), and concluded that the jury could not reasonably have found by clear and convincing evidence each of the elements of a claim for punitive damages as the claim is defined by Indiana law. This standard of reviewing the sufficiency of the evidence is consistent with the standards enunciated by this Court with due regard for the Seventh Amendment right to a jury trial.

The Court of Appeals' standard review is also consistent with that employed in other circuits, even though the precise wording may vary slightly among the circuits. Therefore, no "real and embarrassing" conflict exists among the circuits to justify the granting of the writ of certiorari in this case. The issue raised by the Insured is essentially a factual controversy that depends on an appreciation of the evidence. It is not an issue of constitutional dimensions to warrant certiorari review by this Court.

ARGUMENT

A.

THE DECISION OF THE SEVENTH CIRCUIT COURT OF APPEALS IS CONSISTENT WITH THE STANDARDS ENUNCIATED BY THIS COURT FOR ASSESSING THE SUFFICIENCY OF EVIDENCE.

The Court of Appeals, in the present case, reversed the jury's award of punitive damages. The Court of Appeals found that the jury could not reasonably have awarded punitive damages to the Insured under Indiana law because "it cannot be said that the insurer's conduct in investigating and denying the claim was clearly malicious, fraudulent, oppressive or grossly negligent." 30 F.3d 861, 870.

Indiana law recognizes a cause of action for torticous breach of an insurer's duty to deal with its insured in good faith. *Erie Ins. Co. v. Hickman*, 622 N.E.2d 515, 519 (Ind. 1993). A finding that the insurer committed such a tort does not, standing alone, justify the imposition of punitive damages, however. *Erie*, 622 N.E.2d at 520. As the Court of Appeals properly recognized, an award of punitive damages may be sustained under Indiana law

only if the plaintiff presents "clear and convincing evidence that the defendant 'acted with malice, fraud, gross negligence, or oppressiveness which was not the result of a mistake of fact or law, honest error or judgment, over zealousness, mere negligence, or other human failing.' " 30 F.3d at 870, *citing Erie*, 622 N.E.2d at 520. A finding of bad faith does not alone suffice to support an award of punitive damages.

Proof that an insurer denies liability knowing it has no rational, principled basis for doing so establishes breach of its duty of good faith, but not necessarily the right to punitive damages under Indiana law. *Erie*, 622 N.E.2d at 520. There must be additional evidence of malice, fraud, gross negligence, or oppressiveness.

"Malice" under Indiana law means "a disposition or intent to injure another for the gratification of anger, jealousy, hatred, revenge or the like." *Kelso v. Kelso*, 43 Ind.App. 115, 86 N.E. 1001 (1909). The essential elements of fraud under Indiana law are false material representation of past or existing facts, made with knowledge of reckless ignorance of falsity, which causes reliance of the detriment of the person relying on the representation. *Comfax Corp. v. North American Van Lines, Inc.*, 587 N.E.2d 118, 125 (Ind.App. 1992). Actual fraud may not be based on representations regarding future conduct, or on broken promises, unfulfilled predictions or statements of existing intent that are not executed. *Comfax Corp. v. North American Van Lines, Inc.*, 587 N.E.2d at 125 (Ind.App. 1992). Gross negligence, as used in this context, refers to the same kind of oppressive conduct symbolized by fraud or malice. *Prudential Ins. Co. v. Executive Estates, Inc.*, 174 Ind.App. 674, 369 N.E.2d 1117, 1132 (1978). Conduct revealing a breakdown in the channels of communication in a large corporation is insufficient to show malice. *Prudential*, 369 N.E.2d at 1132.

The Court of Appeals' reversal of the punitive damage award reflects its conclusion that the Insured introduced insufficient evidence to establish the requisite malice, fraud, or oppressiveness by clear and convincing evidence. The facts as recited in the Insured's Petition for Certiorari support the conclusion of the Court of Appeals. Much of the Insured's Statement of the Case and Argument focuses on whether State Farm Mutual Automobile Insurance Co. ("State Farm") acted in bad faith in handling the claim. For example, the Insured states that "[t]he jury received a plethora of evidence from which it could conclude that State Farm acted in bad faith during the five (5) months it handled McLaughlin's loss claim." Petition, p. 8. As noted above, this proof of bad faith does not alone support an award of punitive damages.

It was undisputed at trial that the Insured was two payments behind on his loan for the burned truck and was having other financial problems as well. Defendant's Ex. 15, pp. 9-10, 17; R. 245-47. State Farm's investigation revealed that the Insured was having serious financial difficulties in October of 1990 and was considering loans from family members to pay living expenses for the winter. Defendant's Ex. 15, pp. 9-10, 17; R. 245-47. The investigation revealed that the Insured's trailer was being repossessed for failure to make payments. R. 1019, 1162, 1179.

It was undisputed that the fire was intentionally caused at least partially from inside the truck, that there were no signs of forced entry (R. 1098-1103; Plaintiff's Ex. 31.), that the Insured had the only set of keys (Defendant's Ex. 15, pp. 3, 7-8; R. 1158.), that the Insured removed the vehicle battery within several days preceding the fire, and gave conflicting reasons for removing the battery (Defendant's Ex. 15, p. 8; R. 277; Plaintiff's Ex. 48, R. 1051-52.). It was also undisputed that the radio was removed

prior to the fire. R. 1231-32. The Insured admittedly was within three miles of the truck at the time the fire was set. Defendant's Ex. 15, p. 14.

Based on all of this information, State Farm legitimately suspected the Insured's involvement in the fire. Under Indiana law, a plaintiffs' poor financial condition, coupled with the incendiary nature of the fire, is sufficient circumstantial evidence to support an insurance company's suspicion of arson. *Westers v. Auto-Owners Insurance Co.*, 711 F.Supp. 946, 949 (S.D. Ind. 1989). No reasonable trier of fact could have found that State Farm knew it had no legitimate reason to deny the claim, "but nevertheless refused it." *See Hoosier Ins. Co. v. Mangino*, 419 N.E.2d 978, 983 (Ind.App. 1981).

None of the facts presented at trial or recited in the Insured's Petition for Certiorari support a reasonable inference that State Farm intended to injure the Insured for the gratification of anger, jealousy, hatred, revenge. None of the facts support an inference that the Insured relied to his detriment on any material misrepresentation of fact by State Farm. The Court of Appeals' determination that there was insufficient evidence of such malice or oppressiveness was proper in this case.

The Insured has argued that the Court of Appeals' reversal of the punitive damage award violated his Seventh Amendment right to a jury trial. The direction of a verdict in proper circumstances does not conflict with constitutional provisions guaranteeing jury trials. *Lyon v. Mutual Benefit Health & Accident Association*, 305 U.S. 484, 490-92 (1939). The guaranty of a jury trial, given by the Seventh Amendment to the Federal Constitution, requires only that the jury be allowed to make *reasonable* inferences from facts proved in evidence having a reasonable tendency to sustain them. *Galloway v. United States*,

319 U.S. 372, 395 (1943) (emphasis added). If the evidence fails to support an issue essential to the legal sufficiency of a legally recognized and enforceable claim, the right to a jury trial disappears and the basis for a directed verdict is the absence of an issue for the jury to resolve.

The question of whether there is sufficient evidence to support submission of an issue to a jury is a legal determination and entry of judgment notwithstanding the verdict does not contravene the Seventh Amendment. *Neely v. Martin K. Eby Construction Co.*, 386 U.S. 317, 322, 330 (1966). Seventh Amendment concerns are not implicated where there is an insufficiency of evidence as a matter of law.

As far as Seventh Amendment's right to jury trial is concerned, there is no greater restriction on the province of the jury when the appellate court enters judgment notwithstanding verdict than when trial court does, and there is no constitutional bar to an appellate court's granting judgment notwithstanding verdict. *Neely v. Martin K. Eby Construction Co.*, 386 U.S. 317, 321, 322 (1967).

The Insured argues that the Court of Appeals improperly directed the verdict and thereby violated the Seventh Amendment because it reviewed the sufficiency of the trial evidence by a "reasonable" evidence or inference standard rather than a "no evidence" standard of review. Standards of proof required for submission of evidence to the jury "cannot be framed wholesale for the great variety of situations in respect to which the question arises." *Galloway*, 319 U.S. at 395. The matter is not "greatly aided by substituting one general formula for another." *Galloway*, 319 U.S. at 395. As this Court has stated:

> It hardly affords help to insist upon "substantial evidence" rather than "some evidence" or "any evidence," or vice versa. The matter is essentially one to be worked out in particular situations and for particular types of cases. Whatever may be the general formulation, the essential requirement is that mere speculation be not allowed to do duty for probative facts, after making due allowance for all reasonably possible inferences favoring the party whose case is attacked.

Galloway, 319 U.S. at 395.

The standard for testing the sufficiency of evidence to support a verdict is whether the party with the burden of proof has submitted "probative facts capable of supporting, *with reason*, the conclusion expressed in the verdict." *Myers v. Reading Company*, 331 U.S. 477, 485 (1947) (emphasis added). The plaintiff must "present probative facts from which the [essential elements of the claim] could reasonably be inferred. 'The essential requirement is that mere speculation be not allowed to do duty for probative facts, after making due allowance for all *reasonably possible* inferences favoring the party whose case is attacked.' *Galloway v. United States*, 319 U.S. 372, 395 (1943)," *Tennant v. Peoria & P.U.R. Co.*, 321 U.S. 29, 32-33 (1943). The focal point of judicial review is the reasonableness of the particular inference or conclusion drawn by the jury. *Gallick Baltimore & Ohio R. Co.*, 372 U.S. 108, 115 (1963).

The Seventh Amendment requires only "that the jury be allowed to make reasonable inferences from facts proven in evidence having a reasonable tendency to sustain them." *Galloway*, 319 U.S. at 396. In *Galloway*, this Court upheld the modern form of directed verdict against a Seventh Amendment challenge because similar form of directed verdict existed at common law in 1791 when the Seventh

Amendment was adopted. *Galloway*, 319 U.S. at 396. The Court of Appeals' decision complied in all respects with these standards.

B.

PETITIONERS HAVE NOT PRESENTED SUFFICIENT "SPECIAL AND IMPORTANT REASONS" FOR A WRIT OF CERTIORARI IN THIS CASE.

Supreme Court Rule 10 declares that certiorari will be granted "only when there are special and important reasons therefore." S.Ct. Rule 10.1 (1990). As to federal courts of appeals, certiorari may be granted to resolve conflicts between circuits, conflicts with state courts, and procedural departures calling for an exercise of the Supreme Court's supervisory powers. S.Ct. Rule 10.1(a) (1990). Certiorari is a power which is to be "sparingly exercised." *Forsyth v. Hammond*, 166 U.S. 506, 514, 515 (1897).

Restricting certiorari review to instances in which "special and important reasons" exist to justify for such review reflects this Court's "due regard to the proper functioning of the limited reviewing power to which the Court is confined." *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 73-74 (1955). " 'Special and important reasons' imply a reach beyond the academic or episodic. This is especially true where the issues involved reach constitutional dimensions." *Rice*, 349 U.S. at 74.

The constitutional issues raised by the Insured are more contrived than genuine and do not warrant the granting of certiorari in this case. When the only question is the "propriety of submitting" certain questions to the jury, which "depend[s] essentially upon an appreciation of the evidence," certiorari should not be granted. *Houston Oil Co. v. Goodrich*, 245 U.S. 440, 441 (1917).

This case is essentially a factual controversy which has been fully heard and decided in the courts below. If this case raises a constitutional question under the Seventh Amendment, so does every granted motion for dismissal of a complaint calling for trial by jury, every direction of verdict, and every judgment notwithstanding the verdict. "Fabulous inflation cannot turn these conventional motions turning on appreciation of evidence into constitutional issues, nor can the many diversity cases sought to be brought [to this Court] on contested questions of evidentiary weight be similarly transformed by insisting before this Court that the constitution has been violated." *Houston Oil Co. v. Goodrich*, 245 U.S. 440, 441 (1917). Verbal smoke screens cannot obscure the truth that all that is involved is an appraisal of the fair inferences to be drawn from the evidence. *See Dick v. New York Life Ins. Co.*, 359 U.S. 437, 455-56 (1959).

This Court has also noted the importance of being consistent in refusing to grant the writ of certiorari except in cases where there was a "real and embarrassing conflict of opinion" between the circuit courts of appeals. *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). Where a close examination reveals that the circuit courts of appeals are actually in harmony, the writ of certiorari is improvident. *Layne & Bowler*, 261 U.S. at 393. *See also Sanchez v. Gautier v. Borras*, 283 U.S. 798, 799 (1931) and *Wisconsin Electric Co. v. Sumore Co.*, 282 U.S. 813 (1931).

The Insured has argued that a "serious" conflict exists among the circuit courts of appeals and this Court as to the proper standard of review of jury verdicts. Any such conflict, however, is more illusory and superficial than "real and embarrassing." This Court has cautioned that standards of proof for submission of evidence to the jury

"cannot be framed wholesale for the great variety of situations in respect to which the question arises." *Galloway*, 319 U.S. at 395. The matter is not "greatly aided by substituting one general formula for another." *Galloway*, 319 U.S. at 395. "[T]he essential requirement is that mere speculation be not allowed to do duty for probative facts, after making due allowance for all reasonably possible inferences favoring the party whose case is attacked." *Galloway*, 319 U.S. at 395.

Whether the formula is expressed as "no evidence" or "no reasonable evidence" or against the "great weight" of the evidence, all of the circuit courts of appeals apply a standard that accepts all reasonable inferences in support of the verdict and determines whether the evidence and reasonable inferences can reasonably support the verdict. There is no conflict among the circuit courts of appeals or with the decisions of this Court.

CONCLUSION

No "special and important" reasons exist for certiorari review of this case. The Insured's disagreement with the Court of Appeals regarding the sufficiency of the evidence to support the jury verdict turns on an appreciation of the evidence and does not rise to constitutional dimensions. There is no "real and embarrassing" conflict among the circuits as to the standard for testing the sufficiency of the evidence.

Even if the sufficiency of evidence did raise a Seventh Amendment constitutional question, the Insured has not demonstrated in this case that the decision of the Seventh Circuit Court of Appeals differs to any significant degree with this Court's constitutional standards for assessing the

sufficiency of evidence. Therefore, State Farm respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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